IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.41 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
PRAVIN INVESTMENT LTD - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 06/12/2005
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following question under Section 256(2) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income-tax:

> “Whether, the Appellate Tribunal is right in law and on facts in confirming the order made by the Commissioner of Income-tax (Appeals) wherein he had canceled the order passed by the Income-tax Officer under sec. 104 of the Income-tax Act composing additional income-tax on undistributed profit ?” (sic)

2. Heard Mr.B.B.Naik, learned Standing Counsel appearing on behalf of the applicant-revenue. Though the Board shows endorsement “Notice Unserved”, in light of the view that the Court is inclined to take, it is not necessary to await service.

3. The Assessment Year is 1984-85. As can be seen from the statement of case, the impugned order of the Tribunal dated 13th March, 1991 and the order of the Commissioner (Appeals), both the Commissioner (Appeals) and the Tribunal have respectively followed their own orders for Assessment Years 1982-83 and 1983-84 in assessee's own case without assigning any independent reason. It has further been narrated in the statement of case that for Assessment Year 1982-83 the order of the Tribunal had attained finality, as according to the Revenue,

the amount of additional tax was not large. For Assessment Year 1983-84 though the Revenue had filed Reference Application under Section 256(1) of the Act after the same was rejected by the Tribunal the Revenue has not pursued the same any further. Mr.B.B.Naik, learned Standing Counsel appearing on behalf of the applicant-revenue, has not been able to controvert the aforesaid facts.

4. In the circumstances, the question is left unanswered. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**